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not have decided as they did if the contracts in question, although reasonable, had not been incidental to sales of property. They considered the fact of the sales only as shedding light upon the reasonableness of the transactions. *Green* v. *Price*, 13 M. & W. 695, 698. It can hardly be seriously supposed that the distinction taken had any further existence at common law; and if it has any validity in the present connection it must be by construction of the statute. It is hard to see why the fact that the agreement is collateral to a sale of property should place it beyond the operation of the statute. If that element, however, has the effect claimed, it may further be questioned whether it was present in the principal case; for by the better view a sale of goodwill is not a sale of property. Goodwill is property only by a figure of speech, and when the plaintiff here sold his goodwill he really did no more than bind himself to place the defendant in a position where he might benefit from all the combined circumstances of the business which the plaintiff had organized. The agreement not to compete was then merely incidental to an affirmative contract to place the defendant in the plaintiff's shoes, and was not collateral to a transfer of property. It was incidental to a transaction which resulted in something valuable to each party; and the Federal Supreme Court might, perhaps, extend their rule to cover the present case. But few contracts do not result in something valuable to each party; and shall the rule be extended so as to sanction all contracts in reasonable restraint of trade when they are collateral to contracts which are, from a pecuniary standpoint, valuable to the parties? The line is not easy to draw in applying a rule based upon reasoning which is metaphysical at best. One feels inclined, however, to support the decision in the principal case because of the necessity of limiting the operation of the Trans-Missouri decision to cases where the facts are directly parallel; and the New York court may well have been right in holding that the Trust Act was aimed directly against combinations and monopolies, and did not apply to cases like the present where the element of combination did not exist.

THE RIGHT TO A BENEFIT. — It is characteristic of the growth of the law that a case of first impression is often of more value for the conclusion reached than for the hypothesis upon which it proceeds. So it is in *Keernan* v. *Metropolitan Construction Co.*, 49 N. E. Rep. 648 (Mass.); one accepts the result in some doubt as to the nature of the right involved. The facts are somewhat curious. The defendant company was using a fire hydrant under a right to supply its engine in the construction of sewers. A fire broke out in the plaintiff's house, and the defendant's servants for a time forcibly prevented the use of the hydrant by the fire department of the city. For the damage resulting to the plaintiff from the delay so caused the Massachusetts court holds the defendant liable.

To determine the character of the plaintiff's right is a matter of much difficulty. It is well recognized that the plaintiff has no enforceable right against a public corporation to have public servants extinguish her fire, for the function is governmental. *Springfield Fire Ins. Co.* v. *Keeseville*, 148 N. Y. 46. To support the decision, however, the principal case recognizes a less tangible right to have firemen get water if they choose to do so, in order to put out a fire in the plaintiff's house. Precise analogies to the right thus defined do not appear. It is possible that this right to have the unobstructed use of water from a public system of supply may

be like the right to the use of public highways; but this analogy involves the recognition of a right, not often considered, to have other people come to you upon a highway if they will. *Benjamin* v. *Storn*, L. R. P. C. 407. If it fall within this class of public rights, the private action in the principal case well lies; for the damage suffered is different in kind, and not simply in degree, from that suffered by the community in general. *Dantzer* v. *I. U. Ry. Co.*, 39 N. E. Rep. 223 (Ind.).

If a final basis is sought for the right recognized in the principal case, the interesting speculation arises whether there may not be a broad right to enter into such beneficial relations and to receive such temporal benefits as would accrue in an undisturbed course of events. The infringement of such a right must, upon authority, be considered to consist in an act tortious *per se*, directed against a third party, *prima facie* a tort against him only, and preventing him from entering into beneficial relations with the plaintiff. *Tarleton* v. *M'Gauley*, 1 Peake, N. P. C. 270. A notable example of such a right to enter into beneficial relations would seem to be the right to trade urged so insistently to-day. This appears to have no other true basis. Moreover, the principal case involves not a private benefit, but a public benefit. The courts may well hold that an obstruction to the conferring of such a public benefit due from a governmental body to one of its members is actionable when they might deny such a right in a private benefit; for the right to such a public benefit may be considered as existing though it is not enforceable. But upon the whole, does not the principal case at all events appear to require, as fundamental in the law of torts, the recognition of so broad a right as that to receive a benefit?

INJUNCTION AND SPECIFIC PERFORMANCE. — Contracts of actors and theatrical companies have furnished abundant material for the development of the rules governing injunctions and specific performance; this is as true to-day as in the days of Kean. An important case recently arose in Chicago, in which not the actors but the theatre refused to perform; and the manager of the Black Crook Company sought an injunction against the manager of the Alhambra Theatre. *Welty* v. *Jacobs*, 49 N. E. Rep. 723 (Ill.). There was a bilateral contract between the two parties. The terms of the plaintiff's contract are immaterial except in so far as he agreed to furnish his company to act for seven stated nights, and also to furnish certain printing ten days in advance. The defendant agreed to furnish the theatre with equipments, attendants, house programmes, and innumerable other small matters. Before the day for the first performance, the plaintiff had furnished his printing as agreed; but the defendant had let the theatre to another company. The plaintiff thereupon asked for an injunction restraining the defendant, in effect, from hindering the plaintiff's company in making use of the theatre, from using, or allowing any other company to use, the theatre during the seven days, and from "refusing to furnish" the plaintiff with all the things contracted for. The bill, it must be confessed, was most ingeniously framed; and the lower court granted the injunction. The Supreme Court of Illinois, however, on reviewing the case, supports the appellate court in the view that the injunction was improper.

The decision of the Supreme Court is admirable in its discussion of the principles of equity; and its conclusion cannot be doubted. The case raises the question, among others, to what extent a court of equity will